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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SHANNON W.,

Petitioner,

v.

SUPERIOR COURT OF CONTRA COSTA
COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN &
FAMILY SERVICES et al.

Real Parties in Interest.

A117476

(Contra Costa County Super. Ct.
No. J05-01543)

Shannon W. (Mother) challenges an order of the Contra Costa County Superior Court, Juvenile Division, which set a hearing under Welfare and Institutions Code section 366.26¹ to select a permanent plan for M. G. (born November 2005). She claims there was insufficient evidence to support two of the juvenile court's prerequisite findings. As discussed below, we disagree and deny her petition on the merits.²

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated. References to rules are to the California Rules of Court.

² Section 366.26, subdivision (l)(1)(A) bars review on appeal if the aggrieved party has not made a timely writ challenge to an order setting a hearing for selection and implementation of a permanent plan. The statute also encourages the appellate court to determine all such writ petitions on their merits, as we do here. (§ 366.26, subd. (l)(4)(B).)

BACKGROUND

On November 10, 2005, not long after her birth, the Contra Costa Children & Family Services Bureau (Bureau) filed a petition to establish dependency jurisdiction over M. G. The petition noted the Bureau had taken M. G. into protective custody on November 8, 2005, and alleged Mother was presently unable to provide support because she was under custodial arrest for an alleged violation of Penal Code section 266j.³ (§ 300, subd. (b).) The petition also alleged that Mother, while in the final month of her pregnancy before giving birth to M. G., had placed M. G.'s half-sibling, H. G. (born January 2002), at risk by "solicit[ing] sexual services for money in an online advertisement for both herself and her three-year-old daughter." (§ 300, subd. (j).) Days later the juvenile court formally detained M. G. At the jurisdictional hearing on February 2, 2006, the court sustained an amended allegation under section 300, subdivision (j), which stated Mother had "solicited sexual services online [and] showed poor sexual boundaries and judgment, which placed the child at risk." The court made its dispositional orders on June 9, 2006, continuing M. G. in out-of-home care.

On December 12, 2006, the court began what was, in effect, a combined six-month review hearing under section 366.21, subdivision (e) and a 12-month permanency hearing under section 366.21, subdivision (f). After the conclusion of that hearing on March 27, 2007, the court entered an order terminating Mother's reunification services and setting the matter for a hearing under section 366.26 to select a permanent plan for M. G. This petition followed. (§ 366.26, subd. (l); rule 8.450.)

DISCUSSION

A. *Risk of Detriment*

At a 12-month permanency hearing, the trial court must "order the return of the child to the physical custody of his or her parent . . . unless [it] finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being

³ It appears Mother was later released and this charge was never prosecuted.

of the child. The social worker [has] the burden of establishing that detriment.”
(§ 366.21, subd. (f).)

In adopting the Bureau’s recommendations as to M. G., the juvenile court made the foregoing finding of a substantial risk of detriment. Mother contends the finding is not supported by the evidence. She urges this determination was based on the court’s “profound disapproval” of Mother’s conduct at the time of M. G.’s initial removal, such that it improperly failed to consider evidence of Mother’s progress during the period under review.

Mother’s argument on this point consists largely of a critique of the manner in which the juvenile court weighed the evidence and assessed the credibility of certain witnesses—including Mother. We emphasize, however, that we must accept the juvenile court’s resolution of issues concerning the credibility of witnesses and conflicts in the evidence. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Our task is not to reassess credibility or reweigh the evidence, but to examine the record to determine whether the challenged finding is supported by substantial evidence. (See *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705; *In re Heather A.*, *supra*, at p. 193.) In doing so we view the evidence in the light most favorable to the juvenile court’s ruling, and indulge all reasonable inferences in its favor. (See, e.g., *In re Monica C.* (1995) 31 Cal.App.4th 296, 306.)

A psychological evaluation admitted at the hearing and considered by the court was conducted in June 2006 and completed five months later. In his report, the evaluating psychologist reviewed the events leading to the Bureau’s intervention. In October 2005 Mother had posted an advertisement on an Internet site, offering sex for money. In an online exchange of email, a prospective client asked if Mother’s daughter could be included in their sexual transaction, and Mother agreed.⁴ Mother admitted she had placed the ad and had engaged in prostitution, but denied any participation in the online exchange concerning her daughter. She maintained someone had “set her up,”

⁴ While the ad did not mention H. G., it described Mother as a “Mom” who was “fully lactating,” thus suggesting she lived with a least one young child.

using her email ID and password to impersonate her. She persisted with this claim even after the psychologist confronted her with the fact that investigators had determined the messages attributed to her had originated from her computer—if someone had used her ID and password, they would also have had to use her computer. The psychologist reported that he subsequently learned Mother had admitted to her therapist that she had, in fact, written the messages. The psychologist observed that Mother did “not appear to grasp the severity of [her] circumstances,” and that it was “somewhat difficult to tell if [she was] in deep denial, [was] consciously evasive to avoid consequences, or . . . quite genuinely [saw] little [that was] inappropriate about the direction her life ha[d] gone.”

The results of tests the psychologist gave Mother indicated to him that she “may know the ‘right’ things to say” but has “trouble reading cues and thinking through . . . consequences,” resulting in poor decisions and inappropriate behavior. Her test responses also demonstrated a poor capacity to develop empathy or respond to the needs of others. The psychologist concluded Mother “remain[ed] vulnerable to not perceiving risks to her children or not being able to adequately protect them,” despite some progress in her therapy. She was at risk of reverting to potentially dangerous behaviors if faced with financial difficulties, and at even greater risk of doing so to meet her own emotional needs. As the psychologist put it, it was “difficult to unlearn the lesson of substituting sexual encounters for real intimacy.” He stated that “[t]he fact [she] could conceive of having a conversation about sexually exploiting [H. G.], even if she did not intend to follow through, demonstrates the risk that exists for her children if she herself is in a vulnerable position.”

The psychologist concluded he “would have been hesitant” to recommend reunification efforts on the basis of his own testing and evaluation. However, given reports he had received from Mother’s therapist, to the effect that she was making progress, he “cautiously concur[red]” with that therapist’s recommendation for a “monitored, incremental” reunification plan. Even so, he warned that providers should be alert to “any indication that she is superficially parroting appropriate behaviors without genuinely incorporating changes in beliefs and attitudes.”

Mother's therapist testified at the hearing. She agreed Mother was "at risk of entering into exploitive relationships that could put her children at risk." While she said Mother had "made progress" in that area, she also stated they would "be doing more work on that issue."⁵

In the Bureau's report prepared for the review hearing, completed in late October 2006, the case worker noted Mother had become upset and had walked out of several visits, placing her own feelings before the well-being of her children, and had thus failed to meet the objectives that she be supportive and nurturing of her children and show an ability to meet their emotional needs. The report also stated Mother had not sufficiently acknowledged responsibility for her actions leading to her children's removal and the impact of those actions. Specifically, Mother had led her own mother to believe that "the prostitution was men just helping her out with money," and that the online conversation, through which Mother had offered her daughter for sexual services, "was all a mistake." The case worker stated Mother remained mentally unstable, as evidenced by her continuing "emotional outbursts."

When called to testify at the hearing, the case worker reiterated her views, stating that, while Mother had participated in her case plan, she had not shown progress in being able to "keep the children out of risk." In her view Mother remained too unstable. Throughout the case, she had demonstrated denial, untruthfulness, and a tendency to become overwhelmed "at things that mothers just have to deal with."

Finally we observe that Mother's court-ordered reunification plan, adopted at the dispositional hearing in June 2006, required that she not permit others to sexually abuse her daughters, acknowledge her responsibility for the actions that led to the court's dependency jurisdiction, demonstrate she was nurturing and supportive of her daughters when she visited them, show she could meet her daughters' physical and emotional needs, and comply with psychological treatment. In the report prepared for the review

⁵ We note the juvenile court later commented it had found this therapist to have "a lot of empathy" for Mother, which in its view had "colored" the credibility of her testimony regarding the extent of Mother's progress.

hearing, the case worker concluded that, for the reasons stated in her report, Mother had not met the objective to acknowledge responsibility for her actions, or the objectives to demonstrate that she could be supportive of her children and meet their emotional needs. She also suggested that Mother's "emotional outbursts" evidenced a lack of significant progress in her psychological treatment.

"The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return [of the child] would be detrimental." (§ 366.21, subd. (f).) Given the foregoing evidence, we are satisfied the Bureau made a prima facie showing that Mother had failed to make such progress during the period under review—or, as the juvenile court put it, that Mother had not "really changed." Accordingly, we conclude there was substantial evidence to support the juvenile court's finding that returning M. G. to Mother's custody would "create a substantial risk of detriment to [her] safety, protection, or physical or emotional well-being." (§ 366.21, subd. (f).)

B. *Reasonable Reunification Services*

At a 12-month permanency hearing the juvenile court must determine "whether reasonable services . . . designed to aid the parent . . . to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent" (§ 366.21, subd. (f).) The court must find by "clear and convincing evidence that [such] reasonable services [were] provided or offered to the parent," before it may set a hearing under section 366.26. (§ 366.21, subd. (g)(2).)

Again, the juvenile court adopted the Bureau's recommended finding that, by clear and convincing evidence, it had provided or offered reasonable services to Mother. Mother argues the Bureau did not provide reasonable services because (1) delay in the completion of the court-ordered psychological evaluation and disputes over visitation and placement issues effectively deprived her of any opportunity to engage in treatment responsive to the evaluation's diagnosis or to make appropriate interim changes in her case plan, (2) limits on her visitation with M. G. deprived her of sufficient opportunity to demonstrate her parenting skills and develop a close relationship with her infant

daughter, (3) the Bureau failed to offer family therapy involving Mother, M. G., and her half sibling H. G., and (4) hostility on the part of her case worker prevented the latter from assessing Mother's progress objectively.

Our sole task is to determine whether substantial evidence supports the challenged finding. (*In re Monica C.*, *supra*, 31 Cal.App.4th at p. 306.) The substantial evidence standard applies to our review even though the juvenile court was required to utilize the higher standard of proof by clear and convincing evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) That is, we consider whether substantial evidence would permit a reasonable trier of fact to make the finding by clear and convincing evidence standard of proof. (*In re Andrea G.* (1990) 221 Cal.App.3d 547, 552.) In doing so we view the evidence in the light most favorable to the juvenile court's determination, resolving conflicts and indulging all reasonable inferences in favor of the challenged finding. (See *In re Julie M.* (1999) 69 Cal.App.4th 41, 46.)

Reunification services provided or offered to a parent may be deemed reasonable when the evidence shows the case plan identified the problems leading to the loss of custody, the offered services were designed to remedy those problems, and the agency maintained reasonable contact with the parent and made reasonable efforts to assist that parent in areas in which compliance proved difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.)

We have summarized above the primary objectives in Mother's case plan, and conclude these adequately identified the problems leading to the loss of custody. Mother's responsibilities under the plan included the following: To complete a psychological evaluation and follow the recommendations of the evaluator; to participate in weekly therapy sessions, individual and group, both for general counseling and to address issues relating to Mother's actions leading to her loss of custody; to participate in family therapy with her children, if recommended by the children's therapist; and to complete a parenting class successfully. In our view these appear to be reasonably designed to remedy the identified problems, and the record indicates Mother received services to accomplish these responsibilities. Mother did receive individual therapy and

attended a group focusing on sex or love addiction. H. G.'s therapist conducted three family therapy sessions with Mother and H. G. M. G. was clearly too young to participate in or benefit from these sessions. It is further apparent that Mother received adequate, if supervised, visitation, and that the case worker maintained reasonable contact with her.

The standard is not whether the Bureau could have provided better services in an ideal world, but whether the services were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) We conclude there was substantial evidence to permit a reasonable trier of fact to find by the clear and convincing evidence standard that the Bureau provided Mother with reasonable services under the circumstances.

DISPOSITION

The request for stay is denied, and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Rule 8.264(b)(3).)

STEIN, Acting P. J.

We concur:

SWAGER, J.

MARGULIES, J.